



The Administrative Law Judge assessed the respondent and its insurance carrier \$200 in penalties for late payment of disability compensation. The Administrative Law Judge also assessed the respondent and its insurance carrier \$250 for claimant's attorney fees. Respondent and its insurance carrier requested the Appeals Board to review those assessments.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Order entered by the Administrative Law Judge should be affirmed. In addition, claimant's attorney is hereby granted an additional \$250 for attorney fees to be paid by the respondent and the insurance carrier for services rendered in connection with this review.

Under K.S.A. 44-512a the Administrative Law Judge is empowered to assess a penalty against the respondent and its insurance carrier of up to \$100 per week for each week any disability compensation is past due. The Administrative Law Judge ordered penalties paid "in the amount of \$100.00 per week or \$200.00 total." Claimant asks the Appeals Board to adopt the Administrative Law Judge's penalty order.

Respondent and its insurance carrier contend the Administrative Law Judge improperly "pyramided" the penalty and that \$100 was the maximum penalty the Administrative Law Judge could properly assess. The Appeals Board disagrees with those contentions.

On May 13, 1996, the Appeals Board entered an Order in this proceeding granting claimant certain permanent partial disability benefits. Neither party appealed that Order. Despite claimant's proper demand for payment, respondent and its insurance carrier failed to pay the disability compensation awarded, prompting claimant to present this penalty request to the Administrative Law Judge. As indicated above, the Administrative Law Judge found the disability compensation was at least two weeks past due and assessed a total penalty of \$200, or \$100 per week.

The Appeals Board adopts the finding of the Administrative Law Judge that claimant's disability compensation was at least two weeks past due and that \$100 per week was a reasonable penalty considering the delay between the Order's effective date on May 14, 1996, and the ultimate payment on July 22, 1996.

The Appeals Board agrees with the Administrative Law Judge that claimant's attorney is entitled to \$250 for services rendered in this post-award proceeding at the Administrative Law Judge level. In addition, the Appeals Board finds that claimant is entitled an additional \$250 for services rendered in connection with this review before the Appeals Board. K.S.A. 44-536(g) entitles claimant's attorney an award for attorney fees for certain post-award proceedings. The Appeals Board is able to determine the value of

legal services rendered in proceedings before it. See City of Wichita v. Chapman, 214 Kan. 575, 521 P.2d 589 (1974). In this instance, it is not necessary to remand the question of additional attorney fees to the Administrative Law Judge for determination.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order dated July 30, 1996, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed. In addition, the respondent and the insurance carrier are ordered to pay an additional \$250, for a total of \$500, for claimant's attorney fees for services rendered in this post-award proceeding.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS  
Stephen J. Jones, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director